REMARKS

This Amendment is in response to the Office Action mailed March 7, 2006. In the Office Action, claims 1, 3-7, 11 and 13 were provisionally rejected under the judicially created doctrine of obviousness-type double patenting. In addition, claim 12 was objected due to a grammatical error. Moreover, claims 1-4, 6-7, 11, 14, 15 and 18 -17 were rejected under 35 U.S.C. §102(e) and claims 2-5, 8-10 and 12-20 were rejected under 35 U.S.C. §103(a).

Applicant respectfully traverses these rejections and requests reconsideration of the allowability of claims 1-20. Claims 1, 10-12, 14, 17 and 19 have been revised with claims 1 and 14 including limitations associated with claims 11 and 17, respectfully.

Provisional Obviousness-type Double Patenting

Claims 1, 3-7, 11 and 13 were provisionally rejected under the judicially created doctrine of obviousness-type double based on a co-pending application (Application No. 10/763,691). Due to the "provisional" nature of this objection, Applicant respectfully offers to submit an executed terminal disclaimer to overcome the obviousness-type double patenting rejection provided the pending claims are in condition for allowance.

Objection of Claim 12

Claim 12 was objected due to an alleged grammatical error. Applicant has revised claim 12 and respectfully requests the Examiner to withdraw the outstanding objection.

Rejection Under 35 U.S.C. § 102

Claims 1-4, 6-7, 11 and 14-15 were rejected under 35 U.S.C. §102(b) as being anticipated by Faita (U.S. Patent No. 5,770,035). Claims 1, 6, 7 and 11 were rejected under 35 U.S.C. §102(b) as being anticipated by Lipsztajn (U.S. Patent No. 4,915,927). Applicant respectfully requests the Examiner to withdraw the rejection because a *prima facie* case of anticipation has not been established.

As the Examiner is aware, to anticipate a claim, the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Vergegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the...claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ 2d 1913, 1920 (Fed. Cir. 1989).

For instance, with respect to independent claim 1, Applicant respectfully submits that neither Faita nor Lipsztajn describes a second cell frame including an in-flow port and an out-flow port both placed along a perimeter of the second cell frame, *the out-flow port positioned above the in-flow port*. Emphasis added. This limitation is explicitly set forth in claim 1. Rather, Faita does *not* teach an out-flow port (13) positioned above the in-flow port (12).

In support of this assertion by Applicant, it should be noted that the specification of Faita is devoid of any disclosure regarding the orientation of the flow ports (12, 13). In fact, FIG. 1 illustrates a longitudinal cross-section view, and thus, the latitude orientation of the flow ports is not illustrated. In addition, even if the Examiner considered, albeit incorrectly, that port (12) is above port (13), it is important to note that port (input port 12) is a "nozzle for feeding air or oxygen-enriched air while nozzle (13) is for the withdrawal of acidic water (i.e., output port). Moreover, Lipsztajn does not teach including an in-flow port and an out-flow port both placed *along a perimeter of the second cell frame*. Emphasis added.

It is further noted that claim 11 includes the limitation of the cell frame further comprising an in-flow port and an out-flow port both placed along a perimeter of the second cell frame. The out-flow port positioned above the in-flow port. As a result, the construction of the cell features oppositely positioned input/output flow ports to provide a cross flow condition for the fluid being processed.

Thus, in light of the foregoing, withdrawal of the §102(b) rejection as applied to claims 1-4, 6-7, 11 and 14-15 is respectfully requested. Applicant respectfully reserves the right to further submit additional grounds for traversing the rejection is an appeal is warranted.

Rejection Under 35 U.S.C. § 103

Claims 2-5, 8-10 and 12-20 were rejected under 35 U.S.C. §103(a). More specifically, claims 5, 13, 16-17 and 19-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Faita. Moreover, claims 8-10 were rejected under 35 U.S.C. §103(a) as being unpatentable over Faita in view of Hirai (U.S. Patent no, 5,783,051). Claims 2-5 and 12-20 were rejected under 35 U.S.C. §103(a) as being unpatentable over Lipsztajn. Applicant respectfully traverses the rejection because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143; see also In Re Fine, 873 F. 2d 1071, 5 U.S.P.Q.2D 1596 (Fed. Cir. 1988).* Herein, the combined teachings of the cited references fail to describe or suggest all the claim limitations.

First, Applicant respectfully submits that Lipsztajn does not teach or suggest the apparatus of claim 14 or the system claimed of claim 19 since Lipsztajn does not teach or suggest the translucent or transparent sidewall as claimed.

Second, based on the dependency of claims 2-5, 8-10 & 12-13, claims 15-18 and claim 20 on independent claims 1, 14 and 19, believed by Applicant to be in condition for allowance, no further discussion as to the grounds for traverse is warranted. However, it is noted that the subject matter of many of these claims has not been suggested by any of the cited references.

For instance, with respect to claims 3, 13 and 17, it is alleged that, while the combination of Faita and Hirai does not provide a transparent or translucent sidewall, it would have been obvious to provide such a feature "in order that the indicators of a reaction (such as formation of gas bubbles) might be viewed." Applicant respectfully disagrees with the apparent "judicial notice" references and respectfully requests the Examiner to provide art directed to this

feature. Moreover, with respect to claim 10, it is noted that the Harai teaches away from the claimed invention because Harai does not teach and cannot be considered to suggest a second clamping frame with a centrally located opening as claimed since the holes for fastening the end plate (60) are centrally located.

Request for Examiner's Interview

The Examiner is respectfully requested to contact the undersigned by telephone at the phone number listed below if after review, such claims are still not in condition for allowance. This telephone conference would greatly facilitate the examination of the present application.

Conclusion

In view of the remarks made above, it is respectfully submitted that pending claims 1-20 define the subject invention over the prior art of record. Thus, Applicant respectfully submits that all the pending claims are in condition for allowance, and such action is earnestly solicited at the earliest possible date.

Respectfully submitted,

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Dated: 06/07/2006

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